

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2004 JAN 20 P 2:05

CIVIL ACTION NO.
4:03-CV-40253-NMG
U.S. DISTRICT COURT
DISTRICT OF MASS.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS CUSTODIAN OR
TRUSTEE, f/k/a BANKERS TRUST
COMPANY OF CALIFORNIA, N.A.,**

Plaintiff,

v.

**ROSE CASTRO, JOSH CASTRO,
JOSEPH DIMARE and ALL OTHER
OCCUPANTS,**

Defendants.

**MEMORANDUM IN SUPPORT OF DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS CUSTODIAN OR TRUSTEE, f/k/a BANKERS TRUST
COMPANY OF CALIFORNIA, N.A.'S MOTION TO REMAND**

INTRODUCTION

This action was filed by the Plaintiff, Deutsche Bank, on or about October 27, 2003 in the Housing Court Department of the Trial Court of Massachusetts, Worcester County Division ("Housing Court"). The Complaint seeks to evict Defendants Rose Castro, Josh Castro, Joseph Dimare and all other occupants, who continue to holdover and occupy the subject premises located at 134 Summer Street, Gardner, MA 01440, following a public foreclosure sale, and who owe use and occupancy payments at the rate of \$1,000 since the September 30, 2003 foreclosure. Plaintiff Deutsch Bank is the current owner of the subject premises.

On November 19, 2003, Defendants filed a Notice of Removal with this Court and the Housing Court. The amount that the Plaintiff is seeking in this action for use and occupancy

payments is currently less than \$5,000.00. Defendants have failed to timely file an Answer in this case and have brought forth no claims or counterclaims whatsoever in this action. Since the claims in this case amount to less than the \$75,000.00 statutory requirement for jurisdiction, this case must be remanded to the State court for lack of jurisdiction.

FACTS

On September 30, 2003, Plaintiff Deutsche Bank sold the property located at 134 Summer Street, Gardner, MA 01440 ("Property"), pursuant to a statutory power of sale contained in a Mortgage. Deutsche Bank was the successful bidder at the public foreclosure sale, and is currently the owner of the subject Property. Exhibit A. On October 7, 2003, Deutsche Bank served all Defendants, through the Worcester County Sheriff's Office, with a 72 Hour Notice to Quit and Vacate the Premises. Exhibit B. The Defendants did not vacate the premises, and therefore on or about October 27, 2003, Deutsche Bank filed a Summary Process Summons and Complaint with the Housing Court. Exhibit C. The Complaint seeks to evict Defendants Rose Castro, Josh Castro, Joseph Dimare and all other occupants, and to collect use and occupancy payments at the rate of \$1,000.00 since the September 30, 2003 foreclosure sale, which to date comes to less than \$5,000.00.

The deadline for the Defendants to serve and file an Answer to the Complaint in the Housing Court was November 10, 2003, the first Monday after the entry date stated on the Complaint as November 3, 2003. Trial Court of Massachusetts, Uniform Summary Process Rules ("Unif. Sum. Proc."), Rule 3. The Defendants have not filed an Answer with the Housing Court to date. A hearing was scheduled in the Housing Court for November 11, 2003, and was subsequently rescheduled for November 25, 2003. On November 19, 2003, Defendants filed a Notice of Removal with this Court and the Housing Court. Exhibit D. The

Defendants failed to file an Answer with this Court by the November 26, 2003 deadline, within five (5) days after the filing of the Notice of Removal under the Federal Rules. Fed. R. Civ. P. 81 (c). The Defendants have also failed to file the required certified copies of all records and docket entries in the state court pursuant to the Local Rules.

ARGUMENT

This case must be remanded to the Housing Court because this Court lacks jurisdiction over the action. The Federal District Courts have original jurisdiction over civil actions where the matter in controversy is between citizens of different states, and the value of the controversy exceeds \$75,000.00. 28 U.S.C. § 1332(a) (2003); JPMorgan Chase Bank v. Traffic Stream Infrastructures, 536 U.S. 88, 99-100 (2002). A corporation is deemed to be a citizen of the state in which it is incorporated *and* the state where it has its principal place of business. 28 U.S.C. § 1332(c) (2003); Carden v. Arkoma Assoc., 494 U.S. 185, 187 (1990). The Plaintiff, Deutsch Bank, is a corporation duly established under the laws of the State of Delaware, and has its principal place of business in California. Exhibit A. Thus, Deutsch Bank is a citizen of both Delaware and California for jurisdictional purposes. See Carden, 494 U.S. at 196. The Defendants all claim to be citizens of the State of Massachusetts. Exhibit D, ¶ 4-6. Therefore, there is complete diversity of citizenship in this case.

Although there is diversity of citizenship between the parties in this case, there is no controversy amounting to more than \$75,000 and thus the Court has no jurisdiction to hear this case. Mere diversity jurisdiction alone is insufficient to confer jurisdiction in the absence of the required amount in controversy. New York C.R. Co. v. Mutual Orange Distributors, 251 F. 230 (9th Cir. 1918). The value of a matter in controversy is determined by the subject of the litigation that is presented for judicial determination through the pleadings. See Schunk

v. Moline, Milburn & Stoddart Co., 147 U.S. 500, 504 (1893). The only pleading filed in this case was the Complaint, as the Defendants have not filed an Answer in this action. In its Complaint, the only pecuniary gain that Deutsch Bank seeks is \$1,000.00 per month since September 30, 2003 for use and occupancy payments, which to date comes to less than \$5,000.00. Although this amount continues to grow each month, the typical contested eviction case takes less than six (6) months to resolve, far less than the seventy-five (75) months that would be required for the amount in controversy in this case to meet the statutory requirement for jurisdiction. Since the claims brought forth in this action amount to less than \$5,000.00, this case must be remanded to the Housing Court for lack of jurisdiction.

Defendants claim in their Notice of Removal that they intend to bring a separate and independent claim to be joined with this action, and that such claim will bring the amount in controversy to over \$75,000.00. The deadline for the Defendants to serve and file an Answer to the Complaint in the Housing Court was November 10, 2003, the first Monday after the entry date stated on the Complaint as November 3, 2003. Unif. Sum. Proc. Rule 3. The Federal Rules permit the Defendants in a removed action who have not yet answered to file an Answer within five (5) days after the filing of the Notice of Removal, or by November 26, 2003, which deadline has also passed. See Fed. R. Civ. P. 81 (c). Defendants have failed to file an Answer and have not brought forth any claims whatsoever in this action.

Even if the Defendants were permitted to file a late Answer in this case, it is inconceivable that they could maintain a claim in excess of \$75,000.00 because Massachusetts State law governing Summary Process actions strictly limits counterclaims to those “relating to or arising out of” the subject property. Mass. Gen. L. ch. 239, § 8A (2003). Any claims relating to the mortgage foreclosure, for example, or any other claims whatsoever, must be

brought in a separate action. Thus, any potential claims that Defendants could bring in this action are highly unlikely to have a value of over \$75,000.00.


This action must also be remanded pursuant to Local Rule 81.1 (a) because Defendants have failed to comply with the filing requirements. The Defendants must file certified or attested copies of all records and docket entries in the state court within thirty (30) days after filing a Notice of Removal, or by December 19, 2003 in this instance. See Local Rules of the United States District Court for the District of Massachusetts (“Local Rule”), Rule 81.1 (a). To date, Defendants have failed to file the required records with this Court. The Rules state that “if the clerk of this court has not received the papers required to be filed under section (a) within forty-five (45) days of the filing of the notice for removal, the case *shall* be remanded to the state court from which it was removed, unless this court directs otherwise”. See Local Rule 81.1 (b) (emphasis added).

CONCLUSION

For the foregoing reasons, the Plaintiff Deutsch Bank, respectfully requests this Court to find that this Court has no jurisdiction to hear this action, and to remand the action to the Housing Court Department of the Trial Court of Massachusetts, Worcester County Division.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS CUSTODIAN OR
TRUSTEE, f/k/a BANKERS TRUST
COMPANY OF CALIFORNIA, N.A.,**

By its attorneys,



Kimberly C. Turina

Victor Manougian

HARMON LAW OFFICES, P.C.

P.O. Box 610389

Newton Highlands, MA 021651-0389

(617) 558-8400

Dated: January 15, 2004

OCT 06 2003

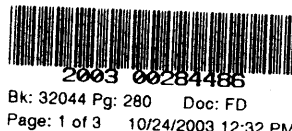
Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company
of California N.A.

a corporation duly established under the laws of the State of Delaware and having its usual place
of business at 10790 Rancho Bernardo Road, San Diego, CA 92127

the current holder by assignment of a mortgage

from Rose Castro

to Advanta National Bank



dated September 2, 1998 and recorded with the Worcester County (Worcester District)
Registry of Deeds at Book 20390, Page 64

, by the power conferred by said mortgage and

every other power for EIGHTY-FIVE THOUSAND AND 00/100 (\$85,000.00) DOLLARS

paid, grants to Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers
Trust Company of California N.A. of 10790 Rancho Bernardo Road, San Diego, CA 92127, the
premises conveyed by said mortgage.

MASSACHUSETTS EXCISE TAX
Worcester District ROD #20 001
Date: 10/24/2003 12:32 PM
Ctrl# 010557 07963 Doc# 00284486
Fee: \$387.60 Cons: \$85,000.00

WITNESS the execution and the corporate seal of said corporation this 10 day of
October, 2003.

Deutsche Bank National Trust Company, as
Custodian or Trustee, f/k/a Bankers Trust Company
of California N.A. *

* BY CHASE MANHATTAN MORTGAGE CORP.
AS ATTORNEY-IN-FACT

recorded herewith in
Book 32044
page 272

By: Toni M Klysz
Toni M Klysz
Assistant Vice President

The State of California

San Diego, ss.

68
October 10, 2003

Then personally appeared the above named Toni M Klysz, Assistant Vice President

of Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust
Company of California N.A. and acknowledged the foregoing instrument to be the free act and
deed of Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust
Company of California N.A., before me

Gary Salas
Notary Public
My Commission expires
CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF
GARY SALAS
COMM. # 1373123
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
COMM. EXP. SEPT. 6, 2006

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of
the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not
delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any
liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of
the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for
recording unless it is in compliance with the requirements of this section.

Loan No. 11509080

MAIL
HARMON LAW OFFICES, P.C.
150 CALIFORNIA ST
NEWTON, MA 02458



Property Address: 134 Summer Street, Gardner, MA 01440

AFFIDAVIT

OCT 06 2003

I, Toni M Klysz, Assistant Vice President of Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. make oath and say that the principal and interest obligation mentioned in the mortgage above referred to were not paid or tendered or performed when due or prior to the sale, and that Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. caused to be published on September 8, 2003, September 15, 2003 and September 22, 2003 in the Gardner News, a newspaper published or by its title page purporting to be published in Gardner and having a circulation therein a notice of which the following is a true copy, (See attached Exhibit A)

I also complied with Chapter 244, Section 14 of the Massachusetts General Laws, as amended, by mailing the required notices certified mail, return receipt requested.

Pursuant to said notice at the time and place therein appointed Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. sold the mortgaged premises at public auction by Jeffrey Craig, a duly licensed auctioneer, of Commonwealth Auction Associates, Inc., to Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. for EIGHTY-FIVE THOUSAND AND 00/100 (\$85,000.00) DOLLARS bid by Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. being the highest bid made therefor at said auction.

Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. *

* BY CHASE MANHATTAN MORTGAGE CORP.
AS ATTORNEY-IN-FACT

recorded herewith in
book 32044
page 272

By: [Signature]
TONI M. KLYSZ, ASST. VICE PRESIDENT

The State of California

San Diego, ss.

October 10, 2003

Signed and sworn to by the said Toni M Klysz, Assistant Vice President of Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A., before me,

MAIL

HARMON LAW OFFICES, P.C.
150 CALIFORNIA ST
NEWTON, MA 02458

Loan No. 11509080

HARMON LAW OFFICES, P.C.
150 CALIFORNIA ST
NEWTON, MA 02458

My Commission expires: _____

[Signature]
Notary Public



150 CALIFORNIA STREET
NEWTON, MASSACHUSETTS 02458

MAILING ADDRESS:
P.O. BOX 610389
NEWTON HIGHLANDS, MA 02461-0389

TEL (617) 558-0500
FAX (617) 244-7304

SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND

October 6, 2003

Rose Castro and all other occupants
134 Summer Street
Gardner, MA 01440

72 HOUR NOTICE TO QUIT AND VACATE PREMISES

Dear Ms. Castro:

Please be advised that this office represents Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A.. Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. is the owner of the property situated at 134 Summer Street, Gardner, Massachusetts. You are notified to vacate the premises within seventy-two (72) hours of your receipt of this Notice.

Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. is not waiving any rights under this Notice to Quit and Vacate by accepting payments from you subsequent to the date of this notice. All payments accepted subsequent to the date of this notice are accepted for use and occupancy only and not as rent. The acceptance of said payments shall not in any way create a new tenancy.

Please be advised that should this matter proceed and a Court action is necessary, we will ask the Court to award damages representing the fair market value of the premises from the time of the foreclosure until the time you are ordered to vacate. This amount is for use and occupancy, not rent.

The reason set forth for this Notice to Quit and Vacate is that you continue to hold over in occupancy of the said premises after foreclosure of the mortgage. The undersigned is the new owner of said premises.

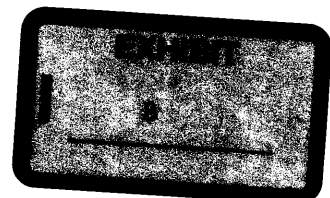
PLEASE VACATE THE PREMISES WITHIN SEVENTY-TWO (72) HOURS OF YOUR RECEIPT OF THIS LETTER, OR WE SHALL BRING A COURT ACTION TO EVICT YOU FROM THE PREMISES. YOU ARE NOTIFIED TO BRING THIS ORIGINAL NOTICE WITH YOU TO ANY SUBSEQUENT HEARING OR CONTINUANCE.

Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A.
By its attorney,


Victor Manougian, Esquire

VVM/MWA/200208-0349-Castro, Rose
Service by Deputy Sheriff

PLEASE BE ADVISED THAT THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND THAT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE



5/6
Kondin



Worcester County Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100
Worcester, ss

10/10/2003

I hereby certify and return that on 10/07/2003 at 02:50pm I served a true and attested copy of the 72 Hour Notice to Quit and Vacate Premises in this action in the following manner: To wit, by leaving at the last and usual place of abode of JOSH CASTRO & ROSE CASTRO & JOSEPH DIMARE & OCCUPANTS at 134 SUMMER ST, GARDNER, MA and by mailing first class mail to the above address on 10/09/2003. Fees: Service 80.00, Travel 15.36, Conveyance 4.50, Attest 40.00 & Postage and Handling 12.00 Total Fees: \$151.86

Deputy Sheriff Stephen E Cormier


Deputy Sheriff

HARMON LAW OFFICES, P.C.

150 CALIFORNIA STREET
NEWTON, MASSACHUSETTS 02458

MAILING ADDRESS:
P.O. BOX 610389
NEWTON HIGHLANDS, MA 02461-0389

TEL (617) 558-0500
FAX (617) 244-7304

SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND

October 6, 2003

Joseph Dimare and all other occupants
134 Summer Street
Gardner, MA 01440

72 HOUR NOTICE TO QUIT AND VACATE PREMISES

Dear Mr. Dimare:

Please be advised that this office represents Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A.. Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. is the owner of the property situated at 134 Summer Street, Gardner, Massachusetts. You are notified to vacate the premises within seventy-two (72) hours of your receipt of this Notice.

Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A. is not waiving any rights under this Notice to Quit and Vacate by accepting payments from you subsequent to the date of this notice. All payments accepted subsequent to the date of this notice are accepted for use and occupancy only and not as rent. The acceptance of said payments shall not in any way create a new tenancy.

Please be advised that should this matter proceed and a Court action is necessary, we will ask the Court to award damages representing the fair market value of the premises from the time of the foreclosure until the time you are ordered to vacate. This amount is for use and occupancy, not rent.

The reason set forth for this Notice to Quit and Vacate is that you continue to hold over in occupancy of the said premises after foreclosure of the mortgage. The undersigned is the new owner of said premises.

PLEASE VACATE THE PREMISES WITHIN SEVENTY-TWO (72) HOURS OF YOUR RECEIPT OF THIS LETTER, OR WE SHALL BRING A COURT ACTION TO EVICT YOU FROM THE PREMISES. YOU ARE NOTIFIED TO BRING THIS ORIGINAL NOTICE WITH YOU TO ANY SUBSEQUENT HEARING OR CONTINUANCE.

Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A.
By its attorney,


Victor Manougian, Esquire

VVM/MWA/200208-0349-Castro, Rose
Service by Deputy Sheriff

PLEASE BE ADVISED THAT THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND THAT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE



Worcester County Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100

Worcester, ss

10/10/2003

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Deputy Sheriff Stephen E Cormier

A handwritten signature in cursive script that reads 'Stephen E. Cormier'. The signature is written in black ink and is positioned above a horizontal line.

Deputy Sheriff

ARMON LAW OFFICES, P.C.

150 CALIFORNIA STREET
NEWTON, MASSACHUSETTS 02458

MAILING ADDRESS:
P.O. BOX 610389
NEWTON HIGHLANDS, MA 02461-0389

TEL (617) 558-0500
FAX (617) 244-7304

SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND

October 6, 2003

Josh Castro and all other occupants
134 Summer Street
Gardner, MA 01440

72 HOUR NOTICE TO QUIT AND VACATE PREMISES

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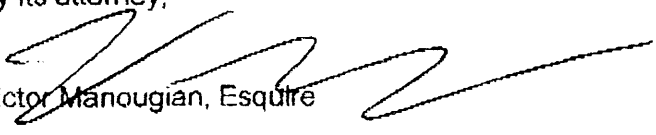
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Please be advised that should this matter proceed and a Court action is necessary, we will ask the Court to award damages representing the fair market value of the premises from the time of the foreclosure until the time you are ordered to vacate. This amount is for use and occupancy, not rent.

The reason set forth for this Notice to Quit and Vacate is that you continue to hold over in occupancy of the said premises after foreclosure of the mortgage. The undersigned is the new owner of said premises.

PLEASE VACATE THE PREMISES WITHIN SEVENTY-TWO (72) HOURS OF YOUR RECEIPT OF THIS LETTER, OR WE SHALL BRING A COURT ACTION TO EVICT YOU FROM THE PREMISES. YOU ARE NOTIFIED TO BRING THIS ORIGINAL NOTICE WITH YOU TO ANY SUBSEQUENT HEARING OR CONTINUANCE.

Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California N.A.
By its attorney,


Victor Manougian, Esquire

VVM/MWA/200208-0349-Castro, Rose
Service by Deputy Sheriff

PLEASE BE ADVISED THAT THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND THAT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

5/16
P...



Worcester Coun., Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100

Worcester, ss

10/10/2003

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Deputy Sheriff Stephen E Cormier

A handwritten signature in black ink that reads 'Stephen E. Cormier'. The signature is written over a horizontal line.

Deputy Sheriff

HARMON LAW OFFICES, P.C.

150 CALIFORNIA STREET
NEWTON, MASSACHUSETTS 02458

MAILING ADDRESS:
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SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND

October 6, 2003

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By its attorney,


Victor Manougian, Esquire

VVM/MWA/200208-0349-Castro, Rose
Service by Deputy Sheriff

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5/6
Casta



Worcester County Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100
Worcester, ss

10/10/2003

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Deputy Sheriff Stephen E Cormier

A handwritten signature in black ink, appearing to read 'Stephen E. Cormier', written over a horizontal line.
Deputy Sheriff

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
SUMMARY PROCESS SUMMONS AND COMPLAINT**

Housing Court Department
Worcester County Division

Serve to Tenant by: October 20, 2003

Entry Date (file with Court by): October 27, 2003

THIS IS A COURT NOTICE OF A PROCEEDING TO EVICT YOU. PLEASE READ IT CAREFULLY.
IMPORTANT ESTE DOCUMENTO ES UNA NOTICIA DE UNA CORTE RESPECTO A PROCEDIENTES PARA DESAJOJARLE

TO Rose Castro, Josh Castro, Joseph Dimare, and all other TEL# _____
occupants

ADDRESS 134 Summer Street CITY Gardner, MA ZIP 01440

You are hereby summoned to appear before the Judge of the Worcester County Housing Court at the time and place listed below.

DAY Tuesday DATE November 11, 2003 TIME 9:00 AM

COURT ADDRESS 108 Matthews Street TOWN Gardner, MA 01440 ROOM _____

to answer the complaint of: ~~XXXXXXXXXX~~ Deutsche Bank National Trust Company, as Custodian or
Trustee, f/k/a Bankers Trust TEL# _____

STREET 10790 Rancho Bernardo Road CITY San Diego, CA ZIP 92127
Company of California N.A.

that you occupy the premises at 134 Summer Street, Gardner, MA 01440 unlawfully and against the right of said
Owner

landlord because: you continue to holdover and occupy the subject premises following a public
foreclosure auction

and further that \$ 1000.00 rent is owed according to the following account:

use and occupancy

Month

Amount owed

Use and occupancy at the rate of

\$1000.00/month since the date of

foreclosure, September 30, 2003

Diana H. Horan

Presiding Justice

James A. Bisceglia

Clerk Magistrate

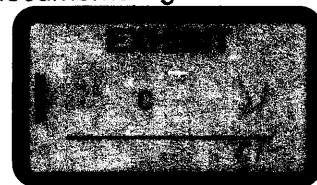
Date October 17, 2003

[Signature] /Victor Manougian
Signature of Plaintiff or Attorney BBO#547808

NOTICE TO OCCUPANTS: At the hearing on 11/11/03 you or your attorney must appear in person to present your defense. You or your attorney must also file (deliver or mail) a written answer to this complaint (answer forms are available in the Clerk's office). You must file (deliver or mail) the answer to the court clerk and deliver or mail a copy to the landlord or landlord's attorney at the address shown on the back of this form. The answer must be received by the court clerk and the landlord or the landlord's attorney no later than the Monday after the entry date 11/03/03. If you do not file and serve an answer, or if you do not defend at the time of the hearing, judgment may be entered against you for possession and the rent as requested in this complaint.

If the landlord does not file the original of this form in court on or before the entry date listed on this form, the court will not schedule the case for trial.

Notificación para las personas de habla hispana: si usted no puede leer ingles. Tenga este documento legal traducido cuanto antes!



To the Sheriffs of our several Counties, or their Deputies, or any Constable of any City or Town within said Commonwealth, GREETINGS: We command you summon the within named tenant / occupant to appear as herein ordered.

WITNESS,

Diana H. Horan

Presiding Justice

James A. Bisceglia

Clerk Magistrate

OFFICER'S RETURN



Worcester County Sheriff's Office • P.O. Box 1066 • Worcester, MA 01613 • (508) 752-1100

Worcester, ss

10/22/2003

I hereby certify and return that on 10/20/2003 at 03:00pm I served a true and attested copy of the Summary Process Summons & Complaint in this action in the following manner: To wit, by leaving at the last and usual place of abode of ROSE CASTRO & JOSH CASTRO & JOSEPH DIMARE & ALL OTHER OCCUPANTS at 134 SUMMER ST, GARDNER, MA and by mailing first class mail to the above address on 10/22/2003. Fees: Service 80.00, Travel 3.84, Conveyance 4.50, Attest 40.00 & Postage and Handling 12.00 Total Fees: \$140.34

Deputy Sheriff Stephen E Cormier

Stephen E. Cormier

Deputy Sheriff

Fees-Service _____
 Service _____
 Travel _____
 Use of car _____
 Last & Usual Mail _____
 Total \$ _____

From the Law Offices of:

Name _____

Street _____ City _____

Phone _____ 617/558-0500

NOTICE TO LANDLORD / OWNER:

Have the Officer complete the return above. Service must be made on the defendant no later than the seventh day and not earlier than the thirtieth day before the Monday entry date. This form must be filed in court no later than the close of business on the scheduled Monday entry date. In appropriate cases, proper evidence of notice to quit must be provided to this court upon the filing of this complaint. See Rule 2(d). The hearing dates in the Housing Court, all of which are after the Monday entry date, will be as follows: Second Thursday, (Worcester Session 9:00 AM, Uxbridge Session 2:00 PM) Second Friday, (Fitchburg Session 9:00 AM) Second Monday, (Dudley Session 2:00 PM) Third Tuesday, (Gardner Session (9:00 AM) or Third Wednesday, (East Brookfield Session 2:00 PM).

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

FILED
IN CLERKS OFFICE

2003 NOV 19 P 2:07

U.S. DISTRICT COURT
DISTRICT OF MASS.

HOUSING COURT
DEPT. OF THE
TRIAL COURT

NO. 03-SP-02875

-----X

DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS CUSTODIAN OR TRUSTEE, f/k/a BANKERS
TRUST COMPANY OF CALIFORNIA, N.A.,

Plaintiff

v.

ROSE CASTRO; JOSH CASTRO; JOSEPH DIMARE,
and ALL OTHER OCCUPANTS,

Defendants

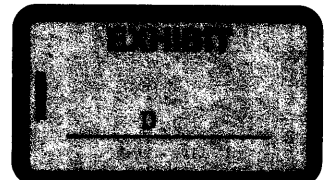
-----X

COPY

NOTICE OF REMOVAL

Pursuant to the provisions of 28 U.S.C. secs. 1332 and 1441, named Defendants Rose Castro, Josh Castro¹, and Joseph Dimare, (hereinafter collectively "Defendants"), hereby remove the above captioned action from the Housing Court

¹ Defendant Josh 'Castro' is a misnomer; the [Defendants] true name is Josh Dimare, and the Defendant has executed this notice in conformity with that fact.



Department of the Trial Court, Worcester Division, County of Worcester, Commonwealth of Massachusetts, to this Court.

As grounds for this removal, the Defendants state the following:

1. Plaintiff, Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California, N.A., (hereinafter "Bankers Trust"), commenced this action against the Defendants in the Housing Court Department of the Trial Court, Worcester Division, County of Worcester, Commonwealth of Massachusetts, on or about October 17, 2003.
2. On or about October 20, 2003, the named Defendants received a copy of the initial pleading setting forth the claim for relief upon which the action is based, and a summons directing them to appear before the state court on November 11, 2003².
3. Plaintiff Deutsche Bank National Trust Company, as Custodian or Trustee, f/k/a Bankers Trust Company of California, N.A., is upon information and belief, a corporation duly organized and existing under the laws of the State of Delaware with its principal place of business in the State of California.

² The Defendants have since been noticed by the Clerk's office of the state court that due to November 11, 2003 being a legal holiday recognized by the legislature of the Commonwealth, that the trial date has been rescheduled from November 11, 2003 to November 25, 2003.

4. Defendant Rose Castro is a natural person domiciled in the Commonwealth of Massachusetts and who has a place of residence at 134 Summer Street, in the City of Gardner, County of Worcester, Commonwealth of Massachusetts.
5. Defendant Josh Castro is a natural person domiciled in the Commonwealth of Massachusetts and whose place of residence is 134 Summer Street, in the City of Gardner, County of Worcester, Commonwealth of Massachusetts.
6. Defendant Joseph Dimare is a natural person domiciled in the Commonwealth of Massachusetts and whose place of residence is 134 Summer Street, in the City of Gardner, County of Worcester, Commonwealth of Massachusetts.
7. There is complete diversity of citizenship between the Plaintiff and the Defendants in this action.
8. Pursuant to the provisions of 28 U.S.C. sec. 1441(c), the named Defendants expect to bring a separate and independent claim or cause of action which (i) would be removable if sued upon alone, (ii) will be joined with the within action, and (iii) when so joined, the controversy shall exceed \$ 75,000.00, exclusive of interest and costs.
9. Thirty (30) days have not elapsed since the named Defendants received a copy of the Plaintiffs' initial pleading.

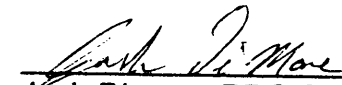
For the foregoing reasons, Defendants Rose Castro, Josh Dimare and Joseph Dimare respectfully remove the within action to this Court from the Housing Court Department of the Trial Court, Worcester Division, County of Worcester, Commonwealth of Massachusetts.

ROSE CASTRO,



Rose Castro, PRO SE
134 Summer Street
Gardner, MA 01440

JOSH DIMARE,



Josh Dimare, PRO SE
134 Summer Street
Gardner, MA 01440

JOSEPH DIMARE,



Joseph Dimare, PRO SE
134 Summer Street
Gardner, MA 01440

Date: November 19, 2003

CERTIFICATE OF SERVICE

I, Rose Castro, hereby certify that on the 19th. day of November, 2003, I served a copy of the within 'Notice of Removal', via first class mail, postage prepaid, upon the following counsel of record for the named plaintiff:

Victor Manougian, Esquire
Harmon Law Offices, P.C.
150 California Avenue
Newton, MA 02458

A handwritten signature in cursive script that reads "Rose Castro". The signature is written in black ink and is positioned above a solid horizontal line.

Rose Castro